

## § 306.7

(d) At least 80 percent of EDA funding must be allocated to direct costs of program delivery.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76132, Dec. 19, 2014]

### § 306.7 Performance evaluations of University Centers.

(a) EDA will:

(1) Evaluate each University Center within three years after the initial Investment award and at least once every three years thereafter, so long as such University Center continues to receive Investment Assistance; and

(2) Assess the University Center's contribution to providing technical assistance, conducting applied research, meeting program performance objectives (as evidenced by retention and creation of employment opportunities) and disseminating Project results in accordance with the scope of work funded during the evaluation period.

(b) The performance evaluation will determine in part whether a University Center can compete to receive Investment Assistance under the University Center Economic Development Program for the following Investment Assistance cycle.

(c) For peer review, EDA shall ensure the participation of at least one other University Center in the performance evaluation on a cost-reimbursement basis.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76132, Dec. 19, 2014]

## PART 307—ECONOMIC ADJUSTMENT ASSISTANCE INVESTMENTS

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AUTHORITY: 42 U.S.C. 3211; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3162; 42 U.S.C. 3233; Department of Commerce Organization Order 10–4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

### Subpart A—General

#### § 307.1 Purpose.

The purpose of Economic Adjustment Assistance Investments is to address the needs of communities experiencing adverse economic changes that may occur suddenly or over time, including those caused by:

(a) Military base closures or realignments, defense contractor reductions in force, or U.S. Department of Energy defense-related funding reductions;

(b) Federally Declared Disaster;

(c) International trade;

(d) Long-term economic deterioration;

(e) Loss of a major community employer; or

(f) Loss of manufacturing jobs.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76132, Dec. 19, 2014]

#### § 307.2 Criteria for Economic Adjustment Assistance Investments.

(a) Economic Adjustment Assistance Investments are intended to enhance a distressed community's ability to compete economically by stimulating private investment in targeted economic sectors through use of tools that:

(1) Help develop and implement a CEDS;

(2) Expand the capacity of public officials and economic development organizations to work effectively with businesses;

(3) Assist in overcoming major obstacles identified in the CEDS;

(4) Enable communities to plan and coordinate the use of Federal resources and other resources available to support economic recovery, development of Regional economies, or recovery from natural or other disasters; or

(5) Encourage the development of innovative public and private approaches to economic restructuring and revitalization.

(b) Economic Adjustment Assistance Investments may be made when the Project funded by the Investment will help the Region meet a Special Need. The Region in which a Project is located must have a CEDS with which the Project is consistent (except that this requirement shall not apply to Strategy Grants described in §307.3).

### §307.3 Use of Economic Adjustment Assistance Investments.

Economic Adjustment Assistance Investments may be used to develop a CEDS to alleviate long-term economic deterioration or a sudden and severe economic dislocation (a “*Strategy Grant*”), or to fund a Project implementing such a CEDS (an “*Implementation Grant*”).

(a) Strategy Grants support developing, updating or refining a CEDS.

(b) Implementation Grants support the execution of activities identified in a CEDS. Specific activities may be funded as separate Investments or as multiple elements of a single Investment. Examples of Implementation Grant activities include:

(1) Infrastructure (as defined in §301.11 of this chapter) improvements, such as site acquisition, site preparation, construction, rehabilitation and equipping of facilities;

(2) Provision of business or infrastructure financing through the capitalization of Recipient-administered Revolving Loan Funds (“*RLFs*”), which may include loans and interest rate buy-downs to facilitate business lending activities;

(3) Market or industry research and analysis;

(4) Technical assistance, including organizational development such as business networking, restructuring or improving the delivery of business services, or feasibility studies;

(5) Public services;

(6) Training; and

(7) Other activities justified by the CEDS that satisfy applicable statutory and regulatory requirements.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76132, Dec. 19, 2014]

### §307.4 Award requirements.

(a) *General.* EDA will select Economic Adjustment Assistance Projects in accordance with part 301 of this chapter and the additional criteria provided in paragraphs (b), (c), and (d) of this section, as applicable. Funding priority considerations for Economic Adjustment Assistance, including RLF Grants, may be set forth in an FFO.

(b) *Strategy Grants.* EDA will review Strategy Grant applications to ensure that the proposed activities conform to the CEDS requirements set forth in §303.7 of this chapter. Strategy Grants shall comply with the applicable provisions of part 303 of this chapter.

(c) *Implementation Grants.* (1) EDA will review Implementation Grant applications for the extent to which the:

(i) Applicable CEDS meets the requirements in §303.7 of this chapter; and

(ii) Proposed Project is identified as a necessary element of or consistent with the applicable CEDS.

(2) Implementation Grants involving construction shall comply with the provisions of subpart B of part 305 of this chapter.

(3) Implementation Grants that do not involve construction shall comply with the applicable provisions of subpart A of part 306 of this chapter.

(d) *See* §307.7 for RLF award requirements.

[71 FR 56675, Sept. 27, 2006, as amended at 75 FR 4264, Jan. 27, 2010; 79 FR 76132, Dec. 19, 2014]

### §307.5 Application requirements.

(a) Each application for Economic Adjustment Assistance must:

(1) Include or incorporate by reference (if so approved by EDA) a CEDS, except that a CEDS is not required

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when applying for a Strategy Grant; and

(2) Explain how the proposed Project meets the criteria set forth in § 307.2.

(b) For a technical assistance Project of significant Regional or national scope under this subpart, EDA may waive the requirement set forth in § 301.2(b) of this chapter that the non-profit organization act in cooperation with officials of a political subdivision of a State.

### Subpart B—Revolving Loan Fund Program

#### § 307.6 Revolving Loan Funds established for business lending.

Economic Adjustment Assistance Grants to capitalize or recapitalize RLFs most commonly fund business lending, but also may fund public infrastructure or other authorized lending activities. The requirements in this subpart B apply to RLFs established for business lending activities. Special award conditions may contain appropriate modifications of these requirements to accommodate non-business RLF awards.

[79 FR 76133, Dec. 19, 2014]

#### § 307.7 Revolving Loan Fund award requirements.

(a) For Eligible Applicants seeking to capitalize or recapitalize an RLF, EDA will review applications for the following, as applicable:

(1) Need for a new or expanded public financing tool to:

(i) Enhance other business assistance programs and services targeting economic sectors and locations described in the CEDS; or

(ii) Provide appropriate support for post-disaster economic recovery efforts in Presidentially Declared Disaster areas;

(2) Types of financing activities anticipated; and

(3) Capacity of the RLF organization to manage lending activities, create networks between the business community and other financial providers, and implement the CEDS.

(b) RLF Grants shall comply with the requirements set forth in this part and in the following publications:

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(1) EDA's RLF Standard Terms and Conditions; and

(2) The Compliance Supplement to OMB Circular A–133. The Compliance Supplement is available via the Internet at <http://www.omb.gov>.

[79 FR 76133, Dec. 19, 2014]

#### § 307.8 Definitions.

In addition to the defined terms set forth in § 300.3 of this chapter, the following terms used in this part shall have the following meanings:

*Closed Loan* means any loan for which all required documentation has been received, reviewed and executed by an RLF Recipient.

*Exempt Security* means a Security that is not subject to certain SEC or Federal Reserve Board rules.

*Prudent Lending Practices* means generally accepted underwriting and lending practices for public loan programs, based on sound judgment to protect Federal and lender interests. Prudent Lending Practices include loan processing, documentation, loan approval, collections, servicing, administrative procedures, collateral protection and recovery actions. Prudent Lending Practices provide for compliance with local laws and filing requirements to perfect and maintain a security interest in RLF collateral.

*Recapitalization Grants* are Investments of additional Grant funds to increase the capital base of an RLF.

*Reporting Period*, for purposes of this subpart B only, means the period from April 1st to September 30th or the period from October 1st to March 31st.

*Revolving Phase* means that stage of the RLF's business lending activities that commences immediately after all Grant funds have been disbursed to the RLF Recipient.

*RLF Capital* means Grant funds plus Local Share plus RLF Income, less any amount used for eligible and reasonable costs necessary to administer the RLF and any amount of loan principal written off.

*RLF Income* means interest earned on outstanding loan principal and RLF accounts holding RLF funds (excluding interest earned on excess funds pursuant to § 307.16(c)(2)), all fees and charges received by the RLF, and other

income generated from RLF operations. An RLF Recipient may use RLF Income only to capitalize the RLF for financing activities and to cover eligible and reasonable costs necessary to administer the RLF, unless otherwise provided for in the Grant agreement or approved in writing by EDA. RLF Income excludes repayments of principal and any interest remitted to the U.S. Treasury pursuant to § 307.16(c)(2)(i).

*RLF Third Party*, for purposes of this subpart B only, means an Eligible Recipient or for-profit entity selected by EDA through a request for applications or Cooperative Agreement to facilitate or manage the intended liquidation of an RLF.

*Sale* means an EDA-approved sale by an RLF Recipient of its RLF loan portfolio (or a portion thereof) to a third party. A third party may participate in a subsequent Securitization offered in a secondary market transaction and collateralized by the underlying RLF loan portfolio (or a portion thereof).

*SEC* or the *Commission* means the U.S. Securities and Exchange Commission.

*Securitization* refers to the financing technique of securing an investment of new capital with a stream of income generated by aggregating similar instruments such as loans or mortgages into a new transferable Security.

*Security* means any investment instrument issued by a corporation, government or other organization which offers evidence of debt or equity.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62867, Oct. 22, 2008; 75 FR 4264, Jan. 27, 2010]

### § 307.9 Revolving Loan Fund Plan.

All RLF Recipients shall manage RLFs in accordance with an RLF plan (the “*RLF Plan*” or “*Plan*”) as described in this section. The Plan shall be submitted in electronic format to EDA for approval, unless EDA approves a paper submission.

(a) *Format and content.* (1) Part I of the Plan titled “Revolving Loan Fund Strategy” shall summarize the Region’s CEDS or EDA-approved economic development plan, if applicable, and business development objectives, and shall describe the RLF’s financing

strategy, policy and portfolio standards.

(2) Part II of the Plan titled “Operational Procedures” must serve as the RLF Recipient’s internal operating manual and set out administrative procedures for operating the RLF consistent with “Prudent Lending Practices,” as defined in § 307.8, the RLF Recipient’s environmental review and compliance procedures as set out in § 307.10, and EDA’s conflicts of interest rules set out in § 302.17 of this chapter.

(b) *Evaluation of RLF Plans.* EDA will use the following criteria in evaluating Plans:

(1) The Plan must be consistent with the CEDS or EDA-approved economic development plan, if applicable, for the Region.

(2) The Plan must identify the strategic purpose of the RLF and must describe the selection of the financing strategy and lending criteria, including:

(i) An analysis of the local capital market and the financing needs of the targeted businesses; and

(ii) Financing policies and portfolio standards that are consistent with EDA’s policies and requirements; and

(3) The Plan must demonstrate an adequate understanding of commercial loan portfolio management procedures, including loan processing, underwriting, closing, disbursements, collections, monitoring, and foreclosures. It also shall provide sufficient administrative procedures to prevent conflicts of interest and to ensure accountability, safeguarding of assets and compliance with Federal and local laws.

(c) *Revision and Modification of RLF Plans.* (1) An RLF Recipient must update its Plan as necessary in accordance with changing economic conditions in the Region; however, at a minimum, an RLF Recipient must submit an updated Plan to EDA every five years.

(2) An RLF Recipient must notify EDA of any change(s) to its Plan. Any material modification, such as a merger, consolidation, or change in the EDA-approved lending area under § 307.18, a change in critical management staff, or a change to the strategic purpose of the RLF, must be submitted

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to EDA for approval prior to any revision of the Plan. If EDA approves the modification, the RLF Recipient must submit an updated Plan to EDA in electronic format, unless EDA approves a paper submission.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62867, Oct. 22, 2008; 75 FR 4264, Jan. 27, 2010; 79 FR 76133, Dec. 19, 2014]

### § 307.10 Pre-loan requirements.

(a) RLF Recipients must adopt procedures to review the impacts of prospective loan proposals on the physical environment. The Plan must provide for compliance with applicable environmental laws and other regulations, including parts 302 and 314 of this chapter. The RLF Recipient also must adopt procedures to comply, and ensure that potential borrowers comply, with applicable environmental laws and regulations.

(b) RLF Recipients must ensure that prospective borrowers, consultants, or contractors are aware of and comply with the Federal statutory and regulatory requirements that apply to activities carried out with RLF loans. Accordingly, RLF loan agreements shall include applicable Federal requirements to ensure compliance and RLF Recipients must adopt procedures to diligently correct instances of non-compliance, including loan call stipulations.

(c) All RLF loan documents and procedures must protect and hold the Federal government harmless from and against all liabilities that the Federal government may incur as a result of providing an RLF Grant to assist directly or indirectly in site preparation or construction, as well as the direct or indirect renovation or repair of any facility or site. These protections apply to the extent that the Federal government may become potentially liable as a result of ground water, surface, soil or other natural or man-made conditions on the property caused by operations of the RLF Recipient or any of its borrowers, predecessors or successors.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76133, Dec. 19, 2014]

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### § 307.11 Disbursement of funds to Revolving Loan Funds.

(a) *Pre-disbursement requirements.* Prior to any disbursement of EDA funds, RLF Recipients are required to provide in a form acceptable to EDA:

(1) Evidence of fidelity bond coverage for persons authorized to handle funds under the Grant award in an amount sufficient to protect the interests of EDA and the RLF. At a minimum, the amount of coverage shall be the greater of the maximum loan amount allowed for in the EDA-approved RLF Plan, or 25 percent of the RLF Capital base. Such insurance coverage must exist at all times during the duration of the RLF's operation; and

(2) Evidence of certification in accordance with § 307.15(b)(1).

(b) *Timing of request for disbursements.* An RLF Recipient shall request disbursements of Grant funds only to close a loan or disburse RLF funds to a borrower. The RLF Recipient must disburse the RLF funds to a borrower within 30 days of receipt of the Grant funds. Any Grant funds not disbursed within the 30 day period shall be refunded to EDA pursuant to paragraph (e) of this section.

(c) *Amount of disbursement.* The amount of a disbursement of Grant funds shall not exceed the difference, if any, between the RLF Capital and the amount of a new RLF loan, less the amount, if any, of the Local Share required to be disbursed concurrent with the Grant funds. However, RLF Income held to reimburse eligible administrative costs need not be disbursed in order to draw additional Grant funds.

(d) *Interest-bearing account.* All grant funds disbursed by EDA to the RLF Recipient for loan obligations incurred but not yet disbursed to an eligible RLF borrower must be deposited and held in an interest-bearing account by the Recipient until an RLF loan is made to a borrower.

(e) *Delays.* If the RLF Recipient receives Grant funds and the RLF loan disbursement is subsequently delayed beyond 30 days, the RLF Recipient must notify the applicable grants officer and return such non-disbursed funds to EDA. Grant funds returned to EDA shall be available to the RLF Recipient for future draw-downs. When

returning prematurely drawn Grant funds, the RLF Recipient must clearly identify on the face of the check or in the written notification to the applicable grants officer “EDA,” the Grant award number, the words “Premature Draw,” and a brief description of the reason for returning the Grant funds.

(f) *Local Share*. (1) Cash Local Share of the RLF may only be used for lending purposes. The cash Local Share must be used either in proportion to the Grant funds or at a faster rate than the Grant funds.

(2) When an RLF has a combination of In-Kind Contributions and cash Local Share, the cash Local Share and the Grant funds will be disbursed proportionately as needed for lending activities, provided that the last 20 percent of the Grant funds may not be disbursed until all cash Local Share has been expended. The full amount of the cash Local Share shall remain for use in the RLF.

[71 FR 56675, Sept. 27, 2006, as amended at 75 FR 4264, Jan. 27, 2010; 79 FR 76133, Dec. 19, 2014]

#### § 307.12 Revolving Loan Fund Income.

(a) *General requirements*. RLF Income must be placed into the RLF Capital base for the purpose of making loans or paying for eligible and reasonable administrative costs associated with the RLF’s operations. RLF Income may fund administrative costs, provided:

(1) Such RLF Income and the administrative costs are incurred in the same six-month Reporting Period;

(2) RLF Income that is not used for administrative costs during the six-month Reporting Period is made available for lending activities;

(3) RLF Income shall not be withdrawn from the RLF Capital base in a subsequent Reporting Period for any purpose other than lending without the prior written consent of EDA; and

(4) The RLF Recipient completes an RLF Income and Expense Statement (the “*Income and Expense Statement*”) as required under § 307.14(c).

(b) *Compliance guidance*. When charging costs against RLF Income, RLF Recipients must comply with applicable Federal cost principles and audit requirements as found in:

(1) 2 CFR part 225 (OMB Circular A-87 for State, local, and Indian tribal governments), 2 CFR part 230 (OMB Circular A-122 for non-profit organizations other than institutions of higher education, hospitals or organizations named in OMB Circular A-122 as not subject to such Circular), and 2 CFR part 220 (OMB Circular A-21 for educational institutions); and

(2) OMB Circular A-133 for Single Audit Act requirements for States, local governments, and non-profit organizations and the Compliance Supplement, as appropriate.

(c) *Priority of payments on defaulted RLF loans*. When an RLF Recipient receives proceeds on a defaulted RLF loan that is not subject to liquidation pursuant to § 307.20, such proceeds shall be applied in the following order of priority:

(1) *First*, towards any costs of collection;

(2) *Second*, towards outstanding penalties and fees;

(3) *Third*, towards any accrued interest to the extent due and payable; and

(4) *Fourth*, towards any outstanding principal balance.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62867, Oct. 22, 2008; 79 FR 76134, Dec. 19, 2014]

#### § 307.13 Records and retention.

(a) *Closed Loan files and related documents*. The RLF Recipient shall maintain Closed Loan files and all related documents, books of account, computer data files and other records over the term of the Closed Loan and for a three-year period from the date of final disposition of such Closed Loan. The date of final disposition of a Closed Loan is the date:

(1) Principal, interest, fees, penalties and all other costs associated with the Closed Loan have been paid in full; or

(2) Final settlement or discharge and cessation of collection efforts of any unpaid amounts associated with the Closed Loan have occurred.

(b) *Administrative records*. RLF Recipients must at all times:

(1) Maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF Income expended for eligible RLF administrative costs.

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(2) Retain records of administrative expenses incurred for activities and equipment relating to the operation of the RLF for three years from the actual submission date of the last semi-annual report that covers the Reporting Period in which such costs were claimed.

(3) Make available for inspection retained records, including those retained for longer than the required period. The record retention periods described in this section are minimum periods and such prescription does not limit any other record retention requirement of law or agreement. In no event will EDA question claimed administrative costs that are more than three years old, unless fraud is at issue.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62867, Oct. 22, 2008; 79 FR 76134, Dec. 19, 2014]

## § 307.14 Revolving Loan Fund semi-annual report and Income and Expense Statement.

(a) *Frequency of reports.* All RLF Recipients, including those receiving Recapitalization Grants for existing RLFs, must complete and submit a semi-annual report in electronic format, unless EDA approves a paper submission.

(b) *Report contents.* RLF Recipients must certify as part of the semi-annual report to EDA that the RLF is operating in accordance with the applicable RLF Plan. RLF Recipients also must describe (and propose pursuant to § 307.9) any modifications to the RLF Plan to ensure effective use of the RLF as a strategic financing tool.

(c) *RLF Income and Expense Statement.* An RLF Recipient using either 50 percent or more (or more than \$100,000) of RLF Income for administrative costs in a six-month Reporting Period must submit to EDA a completed Income and Expense Statement (Form ED-209I or any successor form) for that Reporting Period in electronic format, unless EDA approves a paper submission. EDA may waive this requirement for an RLF Grant with a small RLF Capital Base, as determined by EDA.

[73 FR 62867, Oct. 22, 2008, as amended at 75 FR 4264, Jan. 27, 2010; 79 FR 76134, Dec. 19, 2014]

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## § 307.15 Prudent management of Revolving Loan Funds.

(a) *Accounting principles.* (1) RLFs shall operate in accordance with generally accepted accounting principles (“GAAP”) as in effect from time to time in the United States and the provisions outlined in OMB Circular A-133 and the Compliance Supplement, as applicable.

(2) In accordance with GAAP, a loan loss reserve may be recorded in the RLF Recipient’s financial statements to show the fair market value of an RLF’s loan portfolio, provided this loan loss reserve is non-funded and represents non-cash entries.

(b) *Loan and accounting system documents.* (1) Within 60 days prior to the initial disbursement of EDA funds, a qualified independent accountant who preferably has audited the RLF Recipient in accordance with OMB Circular A-133 requirements, shall certify to EDA and the RLF Recipient that such system is adequate to identify, safeguard, and account for all RLF Capital, outstanding RLF loans, and other RLF operations.

(2) Prior to the disbursement of any EDA funds, the RLF Recipient shall certify that standard RLF loan documents reasonably necessary or advisable for lending are in place and that these documents have been reviewed by its legal counsel for adequacy and compliance with the terms and conditions of the Grant and applicable State and local law. The standard loan documents must include, at a minimum, the following:

- (i) Loan application;
- (ii) Loan agreement;
- (iii) Board of directors’ meeting minutes approving the RLF loan;
- (iv) Promissory note;
- (v) Security agreement(s);
- (vi) Deed of trust or mortgage (as applicable);
- (vii) Agreement of prior lien holder (as applicable); and
- (viii) Signed bank turn-down letter demonstrating that credit is not otherwise available on terms and conditions

that permit the completion or successful operation of the activity to be financed. EDA will permit the RLF Recipient to accept alternate documentation only if such documentation is allowed in the Recipient's EDA-approved RLF Plan.

(c) *Interest rates*—(1) *General rule*. An RLF Recipient may make loans to eligible borrowers at interest rates and under conditions determined by the RLF Recipient to be appropriate in achieving the goals of the RLF. The minimum interest rate an RLF Recipient may charge is four percentage points below the lesser of the current money center prime interest rate quoted in the *Wall Street Journal*, or the maximum interest rate allowed under State law. In no event shall the interest rate be less than the lower of four percent or 75 percent of the prime interest rate listed in the *Wall Street Journal*.

(2) *Exception*. Should the prime interest rate listed in the *Wall Street Journal* exceed 14 percent, the minimum RLF interest rate is not required to be raised above 10 percent if doing so compromises the ability of the RLF Recipient to implement its financing strategy.

(d) *Private leveraging*. (1) RLF loans must leverage private investment of at least two dollars for every one dollar of such RLF loans. This leveraging requirement applies to the RLF portfolio as a whole rather than to individual loans and is effective for the duration of the RLF's operation. To be classified as leveraged, private investment must be made within 12 months of approval of an RLF loan, as part of the same business development project, and may include:

- (i) Capital invested by the borrower or others;
- (ii) Financing from private entities; or
- (iii) The non-guaranteed portions and 90 percent of the guaranteed portions of a Federal loan, including the U.S. Small Business Administration's 7(A) loans and 504 debenture loans and U.S. Department of Agriculture loans.

(2) Private investments shall not include accrued equity in a borrower's assets.

(e) *RLF certification course*. EDA may establish a mandatory RLF certification program to enhance RLF Recipients' ability to administer RLF Grants in a prudent manner. If so required by EDA, the RLF Recipient must satisfactorily complete this program, and may consider the cost of attending the certification courses as an administrative cost, provided the requirements set forth in §307.12 are satisfied.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62868, Oct. 22, 2008; 75 FR 4264, Jan. 27, 2010; 79 FR 76134, Dec. 19, 2014]

#### § 307.16 Effective utilization of Revolving Loan Funds.

(a) *Loan closing and disbursement schedule*. (1) RLF loan activity must be sufficient to draw down Grant funds in accordance with the schedule prescribed in the award conditions for loan closings and disbursements to eligible RLF borrowers. The schedule usually requires that the RLF Recipient lend the entire amount of the initial RLF Capital base within three years of the Grant award.

(2) If an RLF Recipient fails to meet the prescribed lending schedule, EDA may de-obligate the non-disbursed balance of the RLF Grant. EDA may allow exceptions where:

- (i) Closed Loans approved prior to the schedule deadline will commence and complete disbursements within 45 days of the deadline;
- (ii) Closed Loans have commenced (but not completed) disbursement obligations prior to the deadline; or
- (iii) EDA has approved a time schedule extension pursuant to §307.16(b).

(b) *Time schedule extensions*. (1) RLF Recipients shall promptly inform EDA in writing of any condition that may adversely affect their ability to meet the prescribed schedule deadlines. RLF Recipients must submit a written request to EDA for continued use of Grant funds beyond a missed deadline for disbursement of RLF funds. RLF Recipients must provide good reason for the delay in their extension requests by demonstrating that:

- (i) The delay was unforeseen or beyond the control of the RLF Recipient;
- (ii) The financial need for the RLF still exists;



(iii) The current and planned use and the anticipated benefits of the RLF will remain consistent with the current CEDS and the RLF Plan; and

(iv) The proposal of a revised time schedule is reasonable. An extension request must also provide an explanation as to why no further delays are anticipated.

(2) EDA is under no obligation to grant a time extension and in the event an extension is denied, EDA may deobligate all or part of the unused Grant funds and terminate the Grant.

(c) *Capital utilization standard.* (1) During the Revolving Phase, RLF Recipients must manage their repayment and lending schedules to provide that at all times at least 75 percent of the RLF Capital is loaned or committed, except that EDA may require an RLF Recipient with an RLF Capital base in excess of \$4 million to adopt a Plan that maintains a proportionately higher percentage of its funds loaned.

(2) When the percentage of loaned RLF Capital falls below the capital utilization standard, the dollar amount of the RLF funds equivalent to the difference between the actual percentage of RLF Capital loaned and the capital utilization standard is referred to as “excess funds.”

(i) *Sequestration of excess funds.* If the RLF Recipient fails to satisfy the capital utilization standard for two consecutive Reporting Periods, EDA may require the RLF Recipient to deposit excess funds in an interest-bearing account. The portion of interest earned on the account holding excess funds attributable to the Federal Share (as defined in §314.5 of this chapter) of the RLF Grant shall be remitted to the U.S. Treasury. The RLF Recipient must obtain EDA’s written authorization to withdraw any sequestered funds.

(ii) *Persistent non-compliance.* An RLF Recipient will generally be allowed a reasonable period of time to lend excess funds and achieve the capital utilization standard. However, if an RLF Recipient fails to achieve the capital utilization standard after a reasonable period of time, as determined by EDA, it may be subject to sanctions such as suspension or termination.

(d) *Loan default rates.* (1) EDA shall monitor the RLF Recipient’s loan default rate to ensure proper protection of the Federal Share of the RLF property, and request information from the RLF Recipient as necessary to determine whether it is collecting loan repayments and complying with the financial obligations under the RLF Grant. Such information may include:

(i) A written analysis of the RLF Recipient’s portfolio, which shall consider the Recipient’s RLF Plan, loan and collateral policies, loan servicing and collection policies and procedures, the rate of growth of the RLF Capital base, and detailed information on any loan in default; and

(ii) A corrective action plan subject to EDA’s approval, which shall include specific actions the RLF Recipient must take to reduce the loan default rate; and

(iii) A quarterly status report indicating the RLF Recipient’s progress on achieving the milestones outlined in the corrective action plan.

(2) Failure to provide the information requested and to take steps to protect the Federal Share may subject the RLF Recipient to enforcement action under §307.21 and the terms and conditions of the Grant.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62868, Oct. 22, 2008; 75 FR 4264, Jan. 27, 2010; 79 FR 76134, Dec. 19, 2014]

**§ 307.17 Uses of capital.**

(a) *General.* RLF Capital shall be used for the purpose of making RLF loans that are consistent with an RLF Plan or such other purposes approved by EDA. To ensure that RLF funds are used as intended, each loan agreement must clearly state the purpose of each loan.

(b) *Restrictions on use of RLF Capital.* RLF Capital shall not be used to:

(1) Acquire an equity position in a private business;

(2) Subsidize interest payments on an existing RLF loan;

(3) Provide for borrowers’ required equity contributions under other Federal Agencies’ loan programs;

(4) Enable borrowers to acquire an interest in a business either through the

purchase of stock or through the acquisition of assets, unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF;

(5) Provide RLF loans to a borrower for the purpose of investing in interest-bearing accounts, certificates of deposit or any investment unrelated to the RLF; or

(6) Refinance existing debt, unless:

(i) The RLF Recipient sufficiently demonstrates in the loan documentation a “*sound economic justification*” for the refinancing (e.g., the refinancing will support additional capital investment intended to increase business activities). For this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of financing to a borrower shall not, without other indicia, constitute a sound economic justification; or

(ii) RLF Capital will finance the purchase of the rights of a prior lien holder during a foreclosure action which is necessary to preclude a significant loss on an RLF loan. RLF Capital may be used for this purpose only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an RLF’s costs plus a reasonable portion of the outstanding RLF loan within a reasonable period of time, as determined by EDA, following the date of refinancing.

(c) *Compliance and Loan Quality Review.* To ensure that the RLF Recipient makes eligible RLF loans consistent with its RLF Plan or such other purposes approved by EDA, EDA may require an independent third party to conduct a compliance and loan quality review for the RLF Grant every three years. The RLF Recipient may undertake this review as an administrative cost associated with the RLF’s operations provided the requirements set forth in § 307.12 are satisfied.

(d) *Use of In-Kind Contributions.* In-Kind Contributions may satisfy Matching Share requirements when specifi-

cally authorized in the terms and conditions of the RLF Grant and may be used to provide technical assistance to borrowers or for eligible RLF administrative costs.

[73 FR 62868, Oct. 22, 2008, as amended at 75 FR 4265, Jan. 27, 2010; 79 FR 76135, Dec. 19, 2014]

#### § 307.18 Addition of lending areas; consolidation and merger of RLFs.

(a)(1) An RLF Recipient shall make loans only within its EDA-approved lending area, as set forth and defined in the RLF Grant and the Plan. An RLF Recipient may add a lending area (an “*Additional Lending Area*”) to its existing lending area to create a new merged lending area (the “*New Lending Area*”) only with EDA’s prior written approval and subject to the following provisions and conditions:

(i) The Additional Lending Area must meet the economic distress criteria for Economic Adjustment Assistance Investments under this part and in accordance with § 301.3(a) of this chapter;

(ii) Prior to EDA’s disbursement of additional funds to the RLF Recipient (for example, through a recapitalization), EDA shall determine a new Investment Rate for the New Lending Area based on the criteria set forth in § 301.4 of this chapter;

(iii) The RLF Recipient must demonstrate that the Additional Lending Area is consistent with its CEDS, or modify its CEDS for any such Additional Lending Area, in accordance with § 307.9(b)(1);

(iv) The RLF Recipient shall modify its Plan to incorporate the Additional Lending Area and revise its lending strategy, as necessary;

(v) The RLF Recipient shall execute an amended financial assistance award, as necessary; and

(vi) The RLF Recipient fulfills any other conditions reasonably requested by EDA.

(2) The New Lending Area designation shall remain in place indefinitely following EDA approval.

(b) *Consolidation and merger of RLFs—*  
(1) *Single RLF Recipient.* An RLF Recipient with more than one EDA-funded RLF Grant may consolidate two or

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more EDA-funded RLFs into one surviving RLF with EDA's prior written approval and provided:

(i) It is up-to-date with all semi-annual reports in accordance with § 307.14;

(ii) It demonstrates a rational basis for undertaking the consolidation (for example, the lending area(s) and borrower criteria identified in different RLF Plans are compatible, or will be compatible, for all RLFs to be consolidated);

(iii) It amends and consolidates its Plan to account for the consolidation of RLFs, including items such as the New Lending Area (including any Additional Lending Area(s)), its lending strategy and borrower criteria;

(iv) Prior to EDA's disbursement of additional funds to the RLF Recipient (for example, through a recapitalization), EDA shall determine a new Investment Rate for the New Lending Area based on the criteria set forth in § 301.4 of this chapter; and

(v) The RLF Recipient fulfills any other conditions reasonably requested by EDA.

(2) *Multiple RLF Recipients.* Two or more RLF Recipients may merge their EDA-funded RLFs into one surviving RLF with EDA's prior written approval and provided:

(i) The surviving RLF Recipient is up-to-date with all semi-annual reports in accordance with § 307.14;

(ii) The surviving RLF Recipient amends and consolidates its Plan to account for the merger of RLFs, including items such as the New Lending Area (including any Additional Lending Area(s)), its lending strategy and borrower criteria;

(iii) Prior to EDA's disbursement of additional funds to the surviving RLF Recipient (for example, through a recapitalization), EDA shall determine a new Investment Rate for the New Lending Area based on the criteria set forth in § 301.4 of this chapter;

(iv) EDA must provide written approval of the merger agreement(s), modifications and revisions to the Plans and any other related amendments thereto;

(v) All applicable RLF Grant assets of the discharging RLF Recipient(s) transfer to the surviving RLF Recipi-

ent as of the merger's effective date; and

(vi) The surviving RLF Recipient becomes fully responsible for administration of the RLF Grant assets transferred and fulfills all surviving RLF Grant requirements and any other conditions reasonably requested by EDA.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62869, Oct. 22, 2008; 79 FR 76135, Dec. 19, 2014]

### § 307.19 RLF loan portfolio Sales and Securitizations.

EDA may take such actions as appropriate to enable an RLF Recipient to sell or securitize RLF loans, except that EDA may not issue a Federal guaranty covering any issued Security. With prior approval from EDA, an RLF Recipient may enter into a Sale or a Securitization of all or a portion of its RLF loan portfolio, provided:

(a) An RLF Recipient must use all proceeds from any Sale or Securitization (net of reasonable transaction costs) to make additional RLF loans;

(b) No Security collateralized by RLF loans and other RLF property and offered in a secondary market transaction pursuant to a Securitization shall be treated as an Exempt Security for purposes of the Securities Act of 1933, as amended (15 U.S.C. 77a *et seq.*), or the Securities Exchange Act of 1934, as amended (15 U.S.C. 78a *et seq.*) (the "Exchange Act"), unless exempted by a rule or regulation issued by the Commission; and

(c) Except as provided in paragraph (b), no provision of this section supersedes or otherwise affects the application of the "securities laws" (as such term is defined in section 3(a)(47) of the Exchange Act) or the rules, regulations or orders issued by the Commission or a self-regulatory organization under the Commission.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76135, Dec. 19, 2014]

### § 307.20 Partial liquidation; liquidation upon termination.

(a) *Partial liquidation or disallowance of a portion of an RLF Grant.* If the RLF Recipient engages in certain problematic practices, EDA may disallow a corresponding proportion of the Grant or

direct the RLF Recipient to transfer loans to an RLF Third Party for liquidation. Problematic practices for which EDA may disallow a portion of an RLF Grant and recover the pro-rata Federal Share (as defined in §314.5 of this chapter) include the RLF Recipient:

- (1) Having RLF loans that are more than 120 days delinquent;
- (2) Having excess cash sequestered for 12 months or longer and EDA has not approved an extension request;
- (3) Making an ineligible loan;
- (4) Failing to disburse the EDA funds in accordance with the time schedule prescribed in the RLF Grant; or
- (5) Determining that it does not wish to further invest in the RLF or cannot maintain operations at the degree originally contemplated upon receipt of the RLF Grant and requests that a portion of the RLF Grant be disallowed, and EDA agrees to allow the disallowance.

(b) *Liquidation upon termination.* When EDA approves the termination of an RLF Grant, EDA may assign or transfer assets of the RLF to an RLF Third Party for liquidation.

(c) *Terms.* The following terms will govern any liquidation:

- (1) EDA shall have sole discretion in choosing the RLF Third Party;
- (2) The RLF Third Party may be an Eligible Applicant or a for-profit organization not otherwise eligible for Investment Assistance;
- (3) EDA may enter into an agreement with the RLF Third Party to liquidate the assets of one or more RLFs or RLF Recipients;
- (4) EDA may allow the RLF Third Party to retain a portion of the RLF assets, consistent with the agreement referenced in paragraph (c)(3) of this section, as reasonable compensation for services rendered in the liquidation; and
- (5) EDA may require additional reasonable terms and conditions.

(d) *Distribution of proceeds.* The proceeds resulting from any liquidation upon termination shall be distributed in the following order of priority:

- (1) *First*, for any third party liquidation costs;
- (2) *Second*, for the payment of EDA's Federal Share; and

(3) *Third*, if any proceeds remain, to the RLF Recipient.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62869, Oct. 22, 2008; 79 FR 76135, Dec. 19, 2014]

#### **§ 307.21 Termination of Revolving Loan Funds.**

(a)(1) EDA may suspend or terminate an RLF Grant for cause, including the RLF Recipient's failure to:

- (i) Operate the RLF in accordance with the Plan, the RLF Grant or this part;
- (ii) Obtain prior EDA approval for material changes to the Plan, including provisions for administering the RLF;

(iii) Submit an updated Plan to EDA in accordance with §307.9(c);

(iv) Submit timely progress, financial and audit reports in the format required by the RLF Grant and §307.14, including the semi-annual report and the Income and Expense Statement (if applicable);

(v) Manage the RLF Grant in accordance with Prudent Lending Practices, as defined in §307.8;

(vi) Sequester excess funds or remit the interest on EDA's portion of the sequestered funds to the U.S. Treasury, as directed by EDA;

(vii) Submit the documentation requested by EDA regarding a high loan default rate and collection efforts, or correct a high loan default rate, as determined by EDA;

(viii) Comply with the audit requirements set forth in OMB Circular A-133 and the related Compliance Supplement, including reference to the correctly valued EDA RLF Federal expenditures in the Schedule of Expenditures of Federal Awards ("SEFA"), timely submission of audit reports to the Federal Audit Clearinghouse, and the correct designation of the RLF as a "major program" (as that term is defined in OMB Circular A-133);

(ix) Comply with an EDA-approved corrective action plan to remedy RLF-related audit findings; and

(x) Comply with the conflicts of interest provisions set forth in §302.17.

(2) To maintain effective control over and accountability of RLF Grant funds and assets, EDA shall determine the manner and timing of any suspension

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or termination action. EDA may require the RLF Recipient to repay the Federal Share in a lump-sum payment or enter into a Sale, or EDA may agree to enter into a repayment agreement with the RLF Recipient for repayment of the Federal Share.

(b) EDA may approve a request from an RLF Recipient to terminate an RLF Grant. The RLF Recipient must compensate the Federal government for the Federal Share of the RLF property, including the current value of all outstanding RLF loans. However, with EDA's prior approval, upon a showing of compelling circumstances, the RLF Recipient may retain and use for other economic development activities the RLF Recipient's share of RLF Income (or program income) generated by the RLF.

(c) Upon termination, distribution of proceeds shall occur in accordance with § 307.20(d).

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62869, Oct. 22, 2008; 75 FR 4265, Jan. 27, 2010; 79 FR 76135, Dec. 19, 2014]

## § 307.22 Variances.

EDA may approve variances to the requirements contained in this subpart, provided such variances:

(a) Are consistent with the goals of the Economic Adjustment Assistance program and with an RLF Plan;

(b) Are necessary and reasonable for the effective implementation of the RLF;

(c) Are economically and financially sound; and

(d) Do not conflict with any applicable legal requirements, including Federal, State and local law.

## PART 308—PERFORMANCE INCENTIVES

Sec.

308.1 Use of funds in Projects constructed under projected cost.

308.2 Performance awards.

308.3 Planning performance awards.

AUTHORITY: 42 U.S.C. 3151; 42 U.S.C. 3154a; 42 U.S.C. 3154b; Department of Commerce Delegation Order 10-4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

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### § 308.1 Use of funds in Projects constructed under projected cost.

(a) If the Assistant Secretary determines before closeout of a construction Project funded under parts 305 or 307 of this chapter that the cost of the Project, based on the designs and specifications that were the basis of the Investment Assistance, has decreased because of a decrease in costs, EDA may in its discretion approve the use of the excess funds (or a portion of the excess funds) by the Recipient to:

(1) Increase the Investment Rate of the Project to the maximum percentage allowable under § 301.4 of this chapter for which the Project was eligible at the time of the Investment award; or

(2) Further improve the Project consistent with its purpose.

(b) EDA, in its sole discretion, may use any amount of excess funds remaining after application of paragraph (a) of this section for other eligible Investments.

(c) In the case of Projects involving funds transferred from other Federal Agencies, EDA will consult with the transferring Agency regarding the use of any excess funds.

### § 308.2 Performance awards.

(a) A Recipient of Investment Assistance under parts 305 or 307 of this chapter may receive a performance award in connection with an Investment made on or after the date of enactment of section 215 of PWEDA in an amount not to exceed 10 percent of the amount of the Investment award.

(b) To receive a performance award, a Recipient must demonstrate Project performance in one or more of the areas listed in this paragraph, weighted at the discretion of the Assistant Secretary:

(1) Meet or exceed the Recipient's projection of jobs created;

(2) Meet or exceed the Recipient's projection of private sector capital invested;

(3) Meet or exceed target dates for Project start and completion stated at the time of Investment approval;

(4) Fulfill the application evaluation criteria set forth in § 301.8 of this chapter; or